

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

GRANT BIRCHMEIER, et al.,                     ) Docket No. 12 C 4069  
   )  
   ) Plaintiffs,                     )  
   )  
   ) vs.                     )  
   )  
CARIBBEAN CRUISE LINE, INC.,                 )  
et al.,   ) Chicago, Illinois  
   ) October 23, 2018  
   ) 9:35 o'clock a.m.  
Defendants.                                     )

TRANSCRIPT OF PROCEEDINGS - MOTION  
BEFORE THE HONORABLE MATTHEW F. KENNELLY

APPEARANCES:

For the Plaintiff:                     EDELSON PC  
   BY: MR. ALEXANDER G. TIEVSKY  
   350 N. LaSalle St., 14th Floor  
   Chicago, Illinois 60654  
  
For Deft. Caribbean                     TABET DIVITO ROTHSTEIN  
Cruise Line and Vacation                 BY: MR. TIMOTHY A. HUDSON  
Ownership Marketing                     209 South LaSalle Street, 7th Floor  
Tours:                                     Chicago, Illinois 60604  
  
For Deft. The Berkley                     FORDE LAW OFFICES, LLP  
Group:                                     BY: MR. BRIAN P. O'MEARA  
   111 W. Washington St., Suite 1100  
   Chicago, Illinois 60602  
  
Court Reporter:                     MR. JOSEPH RICKHOFF  
   Official Court Reporter  
   219 S. Dearborn St., Suite 1232  
   Chicago, Illinois 60604  
   (312) 435-5562

\* \* \* \* \*

PROCEEDINGS RECORDED BY  
MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED BY COMPUTER

1 THE CLERK: Case No. 12 C 4069, Birchmeier vs.  
2 Caribbean Cruise Line.

3 MR. TIEVSKY: Good morning, your Honor, Alexander  
4 Tievsky for the class.

5 MR. O'MEARA: Good morning, your Honor, Brian O'Meara  
6 on behalf of the defendant The Berkley Group.

7 MR. HUDSON: Good morning, your Honor, Tim Hudson on  
8 behalf of defendant Caribbean Cruise Line and Vacation  
9 Ownership Marketing Tours.

10 THE COURT: And Mr. Bank is not here.

11 MR. TIEVSKY: Mr. Bank sent us an e-mail, said he  
12 wasn't coming.

13 THE COURT: Okay.

14 Well, all right, then. So, one of the things I was  
15 going to tell Mr. Bank -- because the last part of his motion  
16 is that he wanted me to explain to him who appeared at the  
17 hearing on the 18th of September, at which I struck his other  
18 motion for failure to appear, and whether there was an oral  
19 argument; and, if so, who participated in it.

20 What I was going to say to him is that that's why God  
21 invented court reporters and transcripts. So, he can order a  
22 transcript of today, too. And if he wants to know what  
23 happened on October the 18th beyond what I'm going to say  
24 here, he can do that. But I am going to explain it. I said  
25 October; I meant September.

1           So, on September -- I got a notice of motion -- it's  
2   Docket No. 732 -- that reads, and I quote, as follows:  
3   "Please take notice that on Tuesday, September the 18th, 2018,  
4   at 9:30 a.m., or as soon thereafter as counsel shall be heard,  
5   the undersigned shall appear before the Honorable Matthew F.  
6   Kennelly in Courtroom 2103 -- " dot, dot, dot " -- and then  
7   and there present the motion by objector Kevin McCabe for an  
8   order imposing sanctions against plaintiff's counsel."

9           Mr. Bank said he was going to appear. He's the  
10   undersigned. Didn't appear. I entered an order saying that I  
11   struck the motion as a motion for sanctions based on his  
12   failure to appear. I will add to that as a motion for  
13   sanctions, it was frivolous. But I said I would consider it  
14   as his opposition to the motion for costs, and I did.

15           And although in his current motion at which Mr. Banks  
16   said, in essentially the same words that I just described,  
17   that he would -- that he shall appear like right now, five  
18   minutes ago -- although I guess he suggests in there that I  
19   don't -- that I didn't read anything, because he says, "McCabe  
20   requests that the Court read or reread, as the case may be."  
21   That's a quote.

22           I did read it, and I read the reply, and I read the  
23   motion. And I overruled the objection to costs because I was  
24   persuaded that the additional costs that Mr. Bank objects to  
25   on Mr. McCabe's behalf, which is transcript costs, were

1 properly attributable to both appeals -- both objectors'  
2 appeals; and, I was persuaded by the authority that was cited  
3 by the plaintiff class in the motion for costs that it wasn't  
4 necessary to apportion it; and, that's why the cost award was  
5 joint and several.

6 Now, I guess the one mistake I made is I didn't say  
7 specifically that it was joint and several. So, I'm going to  
8 fix that right now.

9 And, so, the order for today is going to say: The  
10 motion to alter the judgment is denied for the reasons stated  
11 in open court. However, at the Court's instance, the order of  
12 October 15, 2018, Docket 735, is corrected to reflect that  
13 costs are taxed against the objectors jointly and severally.

14 And the reason for that is that you shouldn't have to  
15 rely on one or the other to pay the whole thing -- or to pay  
16 half of it.

17 So, there you go. See you later. Sorry you had to  
18 come in.

19 MR. TIEVSKY: Thank you.

20 MR. O'MEARA: Thank you, your Honor.

21 MR. HUDSON: Thank you, Judge.

22 \* \* \* \* \*

23

24

25

1 I certify that the foregoing is a correct transcript from the  
2 record of proceedings in the above-entitled matter.

3  
4 /s/ Joseph Rickhoff  
Official Court Reporter

November 1, 2018

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25